APP. 20

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
Northwestern Corporation,	.	
Debtor.	.	Bankruptcy #03-12872 (CGC)

Wilmington, DE
August 25, 2004
9:00 a.m.

TRANSCRIPT OF CONFIRMATION HEARING
BEFORE THE HONORABLE CHARLES G. CASE, II
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For The Debtor:

William E. Chipman, Jr., Esq.
Greenberg, Traurig, LLP
The Brandywine Bldg.
1000 West St.-Ste. 1540
Wilmington, DE 19801

Adam Cole, Esq.
Greenberg, Traurig, LLP
The Brandywine Bldg.
1000 West St.-Ste. 1540
Wilmington, DE 19801

Scott Cousins, Esq.
Greenberg, Traurig, LLP
The Brandywine Bldg.
1000 West St.-Ste. 1540
Wilmington, DE 19801

Jesse Austin, Esq.
Paul Hastings Janofsky
& Walker, LLP
600 Peachtree St.-24th Fl.
Atlanta, GA 30308

	Karol Denniston, Esq. Paul Hastings Janofsky & Walker, LLP 600 Peachtree St.-24th Fl. Atlanta, GA 30308
For Net Exit Comm.:	Donna L. Harris, Esq. Cross & Simon, LLC 913 North Market St.-Ste. 1001 Wilmington, DE 19801
For The Official Creditor's Committee:	Neil Glassman, Esq. The Bayard Firm 222 Delaware Ave.-Ste. 900 Wilmington, DE 19899
	Alan W. Kornberg, Esq. Paul Weiss Rifkind Wharton & Garrison, LLP 1285 Avenue of the Americas New York, NY 10019
	Mikhail Ratner, Esq. Paul Weiss Rifkind Wharton & Garrison, LLP 1285 Avenue of the Americas New York, NY 10019
	Ephraim Diamond, Esq. Paul Weiss Rifkind Wharton & Garrison, LLP 1285 Avenue of the Americas New York, NY 10019
	Mark Alcott, Esq. Paul Weiss Rifkind Wharton & Garrison, LLP 1285 Avenue of the Americas New York, NY 10019
For Harbert Management:	James Donnell, Esq. Andrews Kurth, LLP Ste. 200 600 Travis Houston, TX 77002

For Magten Asset Management:	Bonnie Steingart, Esq. Fried Frank Harris Shriver & Jacobson, LLP One New York Plaza New York, NY 10004
For MBIA Insurance Corp.:	Stefanie Burbrower, Esq. King & Spalding, LLP 1185 Ave. of the Americas New York, NY 10036
For the State of Montana:	Francis Monaco, Esq. Monzack & Monaco, PA 400 Commerce Center 12th & Orange Sts. Wilmington, DE 19899
For Montana Public Service Commission (Via telephone)	Brady Williamson, Esq. State of Montana Public Service Commission 1701 Prospect Ave. Helena, MT 59620
For PPL Montana:	Lon A. Jenkins, Esq. LeBoeuf Lamb Greene & MacRae, LLP 1000 Kearns Bldg. 136 S. Main Street Salt Lake City, UT 84101
For Credit Suisse First Boston	Jason C. DiBattista, Esq. Morrison & Foerster, LLP 1290 Ave. of the Americas New York, NY 10104
For RCG Carpathia Master Fund	Eric Haber, Esq. Kronish Lieb Weiner & Hellman, LLP 1114 Avenue of the Americas New York, NY 10036 John A. Morris, Esq. Kronish Lieb Weiner & Hellman, LLP 1114 Avenue of the Americas New York, NY 10036

	Megan N. Harper, Esq. Landis Rath & Cobb, LLP 919 N. Market Street-Ste. 600 Wilmington, DE 19801
For Wilmington Trust Co:	Philip Bentley, Esq. Kramer Levin Naftalis & Frankel, LLP 919 Third Ave. New York, NY 10022
For Deutsche Bank,: Indentured Trustee	Joseph K. Koury, Esq. Bifferato Gentilotti & Biden Bruckner Building 1308 Delaware Ave. Wilmington, DE 19899
	Kimberly Newmarch, Esq. Richards Layton & Finger One Rodney Square Wilmington, DE 19801
For	Ronald S. Gellert, Esq. Eckert Seamans Cherin & Mellott, LLC 4 East 8th St.-Ste. 200 Wilmington, DE 19801
For	Rachel Lowey Werkheiser, Esq. Pachulski Stang Ziehl Young Jones 7 Weintraub, PC 919 North Market Street-16th Fl. Wilmington, DE 19899
For	Leslie B. Spoltore, Esq. Fox Rothschild, LLP Citizens Bank Center 919 N. Market Street-Ste. 1300 Wilmington, DE 19899
For Milbank Tweed Hadley: & McCloy, LLP	Mark Shinderman, Esq. Manger Tolles & Olsen, LLP 355 South Grand Ave. Los Angeles, CA 90017
For Securities Class Action: Plaintiffs	Michael S. Etkin, Esq. Lowenstein Sandler, PC 65 Livingston Ave. Roseland, NJ 07068

For Wells Fargo & U.S. Bank	Monica L. Clark, Esq. Dorsey & Whitney, LLP Ste. 1500 50 South Sixth Street Minneapolis, MN 55402
Audio Operator:	Stacy Pavese
Transcribing Firm:	Writer's Cramp, Inc. 6 Norton Rd. Monmouth Jct., NJ 08852 732-329-0191

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THE CLERK: Case #03-12872, Northwestern Corporation.

THE COURT: Good morning. I'll note the appearances of counsel on the appearance sheet, as well as the appearance of those parties who are participating in the hearing today by telephone. I'm going to ask everybody who appears today, please, to identify yourself so that the Court Reporter can keep a good record of our proceedings. I know you're all legends in your own mind, but we don't necessarily -- the keeper of the record won't necessarily know that, so just please identify yourself before you speak. Thank you. All right, are we ready to proceed? Okay, let me get my -- let me get the right binder here.

THE CLERK: You want the one with the agenda in it?

THE COURT: Yes, it's on the bottom.

(Pause in proceedings)

THE COURT: All right. Let's go forward, Counsel.

MR. AUSTIN: Thank you, Your Honor. For the record, I am Jess Austin on behalf of Northwestern Corporation, the Debtor-in-Possession in this Chapter 11 case. We are here today to begin the confirmation hearing on the Debtor's proposed Reorganization Plan, which based on matters which we will present this morning, will be its second amended and restated Plan resulting from the settlement which we announced to the Court a weeks ago with Harbert Management Corporation and Wilmington Trust on behalf of the, what is referred to as

the Toppers. With respect to where we anticipate proceeding today, Your Honor, I'd like to outline what we see as the process. As I'm standing here, I will be, obviously, making the opening and slight introduction as relate to the -- where we anticipate going. We obviously have the Court agenda. From the Debtor's standpoint, we would like to proceed in two primary areas. The first is to deal with the Motions to Allow Approval of the Amended Disclosure Statement and the approval of the Summary Disclosure Statement and the approval of the Resolicitation Procedures.

Following that, Your Honor, we'd like to then move into directly the confirmation hearing, which from that standpoint, we would like to first off begin by highlighting the primary differences between the First Amended Plan and the proposed Second Amended Plan. We'd like to then present those matters which we think that this Court could take notice of relative to the evidentiary record and procedure compliance offer approved as it relates to the technical compliance with Statute 1129 of the Bankruptcy Code, as well as with the issues relative to the voting. We need to make the voting point.

Upon completing that, Your Honor, we would move into our line of testimony, which the Debtor has four witnesses it intends to present today: Mr. Wayne Austin, Mr. Michael Hansen, Mr. Brian Byrd and Mr. Andrew Yearly. At that point, Your Honor, we would anticipate that the evidence, from the

Debtor's standpoint, would be closed as the rights to the submission to be issued before the Court today subject, obviously, to the opening issues or the reservation of issues as we may come back on a second hearing following the resolicitation.

At that point, we believe the Committee has a witness to present, and then, to our knowledge, there is -- the only other parties that have indicated a possibility of presenting live witnesses are the equity interest holders and possibly of Law Debenture. This obviously is not taking into consideration the timing on cross examination relative to the conclusion once the testimony's been presented, Your Honor. I think that the question we would anticipate addressing is just the date for the continuance of the confirmation hearing, and then reserve summations and closing arguments to the conclusion of that hearing.

I would like to make one announcement, Your Honor, and we are aware that as a result of the -- especially the Court's ruling from this past Friday dealing with the Motion to Dismiss, the action filed by both Magten and Law Debenture, that they will be necessarily require some additional update in our disclosure statement. And we are aware that at least we received a copy of the Law Debenture, some objections to the disclosure statement as amended. We've not had a chance to review it. We only received that this morning. We've been

advised that Magten has also filed objections to the disclosure statement. Again, we've not had a chance to review that, but at least in the same practice which we did with the prior disclosure statement, we obviously are, as on behalf of the Debtor, willing to make appropriate changes to, as necessary, to the disclosure statement proof.

With respect to the Court's ruling, we also are contemplating, Your Honor, and have discussed with counsel for the Committee and also with counsel for Law Debenture, one modification to the treatment of the class B, 8B, holders of the Quips' subordinated debt. And that option, it would be modification which we are contemplating, Your Honor, is to offer two options to the class 8B holders. Option number one is that a class 8B Quips holder, if it accepts the Plan, could chose to receive its pro rata share of the stock and warrants that are currently being offered for the class 8B holders. And that would be in satisfaction of its claims and recovery against the Debtor's estate. Or that claim holder of a class 8B claim could chose to make a recovery, make an affirmative choice, to pursue a recovery under the fraud and conveyance action that is still alive relative to the Court's ruling. If that were to occur, those class 8B holders that accept it and made that choice, would then fall into the class 9 general unsecured claims, and we'd make an estimation hearing on what would need to be reserved from the distributions of the stock

that would otherwise go to the class 9 and the class 7 holders on a pro rata basis while we ultimately litigated the validity of that particular plan. If a claimant in that class did not affirmatively choose, we would propose that they would be deemed to take the distribution of the stock and the warrants. If a claimant in that class action rejected, then it would obviously fall into the litigation claim which we think is obviously currently provided for in the plan. We think that may well be an appropriate way to deal with the issues that arise as a result of the Court's rulings from last Friday and at least gives the holders of those Quips, because there may well be a group of the claim holders that still -- that held those -- bought those Quips prior to November 2002 and hold those claims today. And there're obviously claim holders such as Magten who acquired those claims post-November 2002 that may find themselves, at least from the Debtor's perspective, in a different category. So that is a possible modification to the Plan which we are contemplating, Your Honor. It -- obviously a decision on that would be made by the time we finalize the disclosure statement and Plan and is one we are discussing with counsel for the Creditors' Committee and counsel for Law Debenture and is something that may well proceed during the course of today's hearing. I did want to alert the Court to that possible modification as a result of this Court's ruling from last Friday.

With that, Your Honor, I'd like to turn this matter over to Ms. Denniston who will go through both the agenda and then begin with proceeding on the resolicitation procedures.

MS. DENNISTON: Good morning, Your Honor. Karol Denniston on behalf of the Debtor. Turning to the Amended Notice of Agenda of matters scheduled for today's hearing, with regard to matter one, the pre-trial conference on the amended verified complaint for declaratory temporary and permanent injunctive relief, we would request that this matter be continued to September 15 hearing.

THE COURT: So ordered.

MS. DENNISTON: Thank you, Your Honor. With regard to matter number two, the confirmation of the Debtor's First Amended Plan, we would ask to move that to the end of the docket today so that we can address the other matters.

THE COURT: All right.

MS. DENNISTON: Matter number three, Your Honor, is the Motion of RCG Carpathia Master Fund and Kellogg Capital Group for authority to file portions of objection to the Debtor's First Amended Plan under seal. The Debtor has no objection and is happy to stipulate to that filing.

THE COURT: Anybody else wish to be heard in connection with item number three?

MR. HABER: Good morning, Your Honor. Eric Haber of Kronish, Lieb, Weiner & Hellman for RCG --

THE COURT: You need to make sure -- I want to just warn all counsel -- make sure you wait until you get to the podium before you start speaking and then speak up loudly because we have a host of folks on the telephone who otherwise won't be able to hear what's going on.

MR. HABER: I apologize, Your Honor. Eric Haber of Kronish, Lieb, Weiner & Hellman for RCG Carpathia Master Fund and Kellogg Capital Group. We have a proposed order to hand up if the Court pleases?

THE COURT: All right.

MR. HABER: Thank you.

THE COURT: I think there may be somebody on the telephone who is typing on a computer and is on a speaker phone. If that is you, please don't do that. If you need to type on a computer, you need to take it off the speaker phone because it's a very loud noise here in the Courtroom that will bother everybody. Thank you.

(The Court reviews document)

THE COURT: I've signed the order.

MS. DENNISTON: Thank you, Your Honor. With regard to matter number four, the Motion of Credit Suisse First Boston for Order Granting Leave to File a Response to Objection of Magten Asset Management Corporation and Law Debenture, the Debtor has no objection to this Motion.

THE COURT: Anybody else wish to be heard in

connection with this matter?

MR. DIBATTISTA: Good morning, Your Honor. Jason DiBattista from Morrison & Foerster representing Credit Suisse First Boston. I have a proposed order to hand up to Your Honor if the Court pleases.

THE COURT: All right.

MR. DIBATTISTA: Thank you.

(The Court receives document)

THE COURT: I've signed the order, thank you.

MS. DENNISTON: Your Honor, the next matter on the agenda is matter number five, the Emergency Motion of Law Debenture Trust Company of New York to adjourn the Debtor's confirmation hearing. We believe this matter was addressed by the teleconference with the Court on August 20 --

THE COURT: It's already --

MS. DENNISTON: -- 2004.

THE COURT: -- vacated. It's ordered vacating the hearing.

MS. DENNISTON: Thank you, Your Honor. Matter number six is the Motion to Approve the Debtor's second amended and restated disclosure statement and summary disclosure statement, establish procedures for limited solicitation, tabulation of votes on Debtor's second amended and restated Plan, approving the form and manner of notice, and granting related relief. I'd ask to come back to that, Your Honor, as soon as we've

completed the agenda.

THE COURT: All right.

MS. DENNISTON: Matter number seven is the Motion of PPL Montana for Extension, or in the alternative, for an order directing that the resolution of the objection of PPL Montana's Proof of Claim be determined by the United States District Court. A stipulation has been reached, Your Honor, to continue that matter to September 15th, and I would -- the parties have signed and filed that stipulation and I would ask that that -- that I be able to hand up the order so it can be entered at this time.

THE COURT: All right, please do.

(The Court receives document)

THE COURT: I've signed the order.

MS. DENNISTON: Thank you, Your Honor. Two other housekeeping details with regard to stipulations. The first one is a stipulation and order adjourning the hearing date related to section three of the limited objection of PPL Montana to confirmation of the Debtor's First Amended Plan. The parties have stipulated that this objection, if not resolved prior to the continued hearing date, will be continued and heard at the continued confirmation hearing. This stipulation has been filed with the Court. I'd like to hand that up so that we can get the order signed.

(The Court receives document))

THE COURT: I've signed the order.

MS. DENNISTON: Thank you, Your Honor. The last stipulation is the stipulation and order between and among the Debtor, the Official Committee of Unsecured Creditors, RCG Carpathia Master Fund and Kellogg Capital Group stipulating to the qualification of certain witnesses identified by the parties pursuant to Federal Rule of Evidence 702. The parties have signed the stipulation this morning. I'd like to hand that up so that we can get the order entered.

THE COURT: All right.

(The Court receives document)

THE COURT: I've signed the order.

MS. DENNISTON: Thank you, Your Honor. With that, we'd like to return to matter number six, the Motion to Approve the Debtor's second amended and restated disclosure statement and summary disclosure statement.

THE COURT: Okay.

MS. DENNISTON: Consistent with the Debtor's approach to getting -- obtaining approval of its first amended disclosure statement, the Debtor has followed a similar process, Your Honor. We circulated -- well, we filed the pleadings last Wednesday and since that time, we have been speaking with the parties regarding requested changes, both to the Plan and the disclosure statement. I'd like to make a record of those changes that the Debtor has already agreed to

in connection with objections that were received by telephone and in connection with some of the written objections and then move on to those objections that remain unresolved at this time. We would ask that, consistent with the prior disclosure statement hearing, that to the extent that there are additional objections being made that the parties would place on the record today those changes that they would like made to the disclosure statement so that the Debtor can make those changes, circulate the disclosure statement. We would anticipate on circulating the disclosure statement on Friday so that it could be filed and, hopefully, have an order by the first part of next week.

THE COURT: Okay.

MS. DENNISTON: With that, Your Honor, with regard to the changes to the Plan and disclosure statement, the Second Amended Plan, the second amended disclosure statement, and the summary disclosure statement will be revised to reflect that class 8A will receive 2 million 334,409 shares of new common stock plus the warrants exercisable for an additional 10.7% of new common stock. Class 8B, in the event that it votes to accept as a class to accept the Plan, will receive 505,591 shares of new common stock plus warrants exercisable for an additional 1.4% of the new common stock. With regard to PPL Montana, the Plan and disclosure statement have been updated to reflect that PPL Montana amended its Proof of Claim on August

3rd, 2004 and to reflect the continuing objection related to the establishment of the claim reserve pursuant to the Plan.

U.S. Bank and Wells Fargo have requested clarification regarding section 5.20 of the Second Amended Plan. Section 5.20 states that, "Upon receipt of acceptance of a distribution from the Reorganized Debtor, any and all claims and causes of action as between the Debtor and the claimant accepting the distribution shall be fully and finally resolved." Section 5.20 applies only to full distribution. It is not meant to apply in the event of a partial distribution. The disclosure statement and Plan will be updated to reflect this Court's decision in the Magten adversary proceeding. I have noted that that is an objection that has been raised by Magten and Law Debenture. While the Debtor is happy to supplement, we would ask that during the course of this proceeding that they place on the record that language that they want so that we can proceed to update the disclosure statement.

The disclosure statement will be updated to reflect the filing of the Exit Financing Motion by the Debtor on August 20, 2004. It will also be updated to reflect the Montana Public Service Commission's entry of the consent order approving the stipulation and settlement.

As to National Union, the Plan and disclosure statement will be updated to reflect that there is an adversary proceeding in connection with the National Union Fire Insurance

Company of Pittsburgh. National Union has contested Northwestern's ownership of the policy and ability to assume such policy under the Plan. Northwestern's interest in the policy will be determined in the adversary proceeding and nothing in the Plan is intended to affect either the Debtors or National Union's rights in connection with the adversary proceeding. National Union has suggested language which the Debtor has accepted and that language is as follows, "The Debtor is the Plaintiff in an adversary proceeding styled Northwestern Corporation versus National Union Fire Insurance Company of Pittsburgh, PA, Adversary Proceeding #04-53072 {parenthetical} (CGC) {close parenthetical}, the National Union Adversary Proceeding. In the National Union Adversary Proceeding, the Debtors dispute whether the Debtor -- the parties dispute whether the Debtor has a right to coverage arising from or under commercial umbrella policy #BE9329674 with the policy period of September 1, 1999 through September 1, 2000 issued to Montana Power Company by National Union Fire Insurance of Pittsburgh, PA, the National Union Policy. The parties intend only that a final binding order or settlement agreement entered into the National Union Adversary Proceeding shall control the parties' respective rights and obligations arising from or under the National Union Policy. As such, nothing contained in the Plan or the confirmation order, including the Debtor's purported assumption of executory

contracts under section 8.1 through 8.3 of the Plan, shall affect coverage under the National Union policy or National Union's rights, defenses, limitations and/or exclusions to be raised in the National Union adversary proceeding."

With regard to Milbank Tweed, the Debtor has agreed to add similar language consistent with the language provided to Goldman Sachs to section 10.9 of the Second Amended Plan. The proposed language is as follows: "No injunction against impairment of claims of Goldman Sachs & Co. or Milbank Tweed Hadley & McCloy LLP against non-Debtors, notwithstanding any language to the contrary in the disclosure statement plan and/or confirmation order, no provision of the plan or confirmation order enjoins, releases or otherwise impairs any claim of Goldman Sachs & Co. or Milbank Tweed Hadley & McCloy against any person or any entity other than the Debtor and the Reorganized Debtor or otherwise limits any defense, set off, counterclaim or cross-claim either may have against any party, person or entity except that any recovery by Goldman Sachs & Co. or Milbank Tweed Hadley & McCloy on such counter claim or cross-claim against the Debtor or Reorganized Debtor shall be limited by the plan."

We have corrected in section 5.8, the defined term "Cash" has been capitalized. In Section 1.126, the new incentive plan, "special reorganization grants" has been changed to "special recognition grants." And with regard to the Montana

Benefit Restoration Plan, we are working on counsel, the disclosure statement will reflect that the Debtor is working with counsel on determining alternatives for participants in the Montana Benefit Restoration Plan and that as to their objection related to the claims reserve that that matter would be continued to the continued confirmation hearing.

Those, Your Honor, in short, are a summary of the changes that the Debtor has been requested to make and has agreed to make in connection with the second amended disclosure statement. I note that we have this morning objections filed by Magten and Law Debenture. And I think, subject to the Court's concurrence, that we turn that matter over to them so we can address those objections at this time.

THE COURT: All right.

MR. SNELLINGS: Good morning, Your Honor. John Snellings for Law Debenture. Just before I turn to our objection which we did file electronically today and I handed up a copy of it earlier, with respect to Mr. Austin's statement regarding a possible new amendment to the Plan with regard to treatment of the Quips, I just want to note on the record that it has been just proposed this morning just prior to this hearing. It is certainly under consideration; however, due to the start of the hearing, we haven't had any opportunity to discuss it with our client. But also, just as a note of caution and to control the tyranny of expectations, I would

want to put on the record that as of now, that offer is rejected because we do not believe that it takes into consideration the value of the claim. But we will continue to discuss this with the Committee and with the Debtor and see if we can get somewhere in the next few days. With regard to our objection to the disclosure statement, we believe Mr. Austin has also addressed the primary issue that we believe that the second amended disclosure statement needs further work due to your order that was issued last Friday and more accurately, presenting to those that are going to vote on these amendments with regard to the status of the adversary proceeding. We believe that given the Hobson's choice that this particular plan, as it now stands, provides to the Quip holders, which is either to vote for the plan and waive their adversary proceeding versus voting for the plan and accepting the treatment that is there for 8B, that it is an important and necessary revision to give them a full and candid presentation of the present status of this adversary proceeding, not only with respect to your decision, which we would suggest given the limited solicitation that a copy of that decision should be attached as an exhibit both to the amended disclosure statement and the summary, but also with respect to in the summary and in the disclosure statement itself when it talks about the waiving or foregoing of claims and other things, including the adversary proceeding, that needs to be very explicit. So the

individual holders who may not be as sophisticated as some of our other holders will understand exactly what they're giving up.

I'd also like to state, just so that we're clear on this, when I make these comments regarding the amendments to the disclosure statement, I would want them parallel with and consistent with the summary that is being proposed, and I will address that as an additional, practical concern that we have. So the first one is the amendment to the disclosure statement with regard to characterizing the litigation.

Second, we also believe that it needs to be highlighted in greater detail and with greater explicisity that -- if that's a word -- the treatment of the fact that they are giving up this litigation. While it's referred to, we do not believe that it is highlighted as much so that people can make an informed decision with regard to that.

Next, Your Honor, of course as we've discussed last Friday and has been presented today, the biggest alteration to the plan is the splitting or bifurcating of class 8 into class A and class B. We do not believe that the disclosure statement nor the summary does enough to explain the business rationale and the purpose of that particular decision to split these classes. If, in fact, the Debtor wanted to obtain approval of their plan as now amended to the settlement with Wilmington, they could have kept the class as one and Harbert's change of

their vote would have had an accepting class. Instead, they have split the classes and while they make a summary statement that, "We did it because the Quips and the Toppers asked for it," I believe that it's just not enough and that they should have to present why they actually did the bifurcation and what was the legitimate business reason behind that so that the people who are going to vote on this understand what the Debtor was thinking at that time.

Furthermore, Your Honor, it has been stated in Friday's hearing as well as here, that A and B are being treated as the same and getting the same treatment. Certainly, the share of the enhanced 8% as well as the warrants under that division is similar treatment; however, I do not believe that the disclosure statement goes into three particular areas in which the treatment is different. And that has to be highlighted so that the Quips holders can understand that. One, it is my understanding, reading further into the disclosure statement, that Harbert and Wilmington will be receiving an additional $2.25 million to cover their fees and expenses. A similar treatment is not being afforded Law Debenture or Magten. Also, class 8A claims are explicitly liquidated, but in contrast, the Quip claims, the Debtor is reserving for itself or any other interested party the right to object to the claims of Quip holders. That is not similar treatment and it needs to be highlighted that, in fact, there is a different level of

treatment here. And, of course, class 8A is not saddled with the death trap imposed on 8B and that needs to be explained as well and disclosed why that different treatment is being afforded class 8A.

Also, Your Honor, we -- with regard to the fact -- and this is sort of the book end with regard to the adversary proceeding -- now that the Motion to Dismiss has been decided, we believe that the second amended disclosure statement needs to be amended to disclose how the Debtor will deal with and how it -- this Plan will be affected by the possibility of a judgment in the Quips' favor with regard to the fraudulent transfer, whether they're going to reserve for that and how they're going to proceed. It was enough at the time of the original disclosure statement to say, "We're going to vigorously defend this and we filed a Motion to Dismiss." Now that the Motion to Dismiss has been decided and we're moving forward, I think that the Debtor owes it to all Creditors to discuss how they will deal with this pending litigation and how it might or might not affect the feasibility of the Plan or the value of the common stock that is going to be issued under this Plan.

Those are, basically, the objections to the disclosure statement. We do have a concern, and we raised this in our objection, with regard to the solicitation procedures. We are concerned with the significant changes that are being made in

the disclosure statement, especially with regard to the characterization of the litigation that only the Debtor has requested that you allow them to only send out to the Quip holders, as well as those in class 7 and 9, the summary. We think that that is inadequate and that they should be able to review the entire modified disclosure statement and not just a summary.

We are also concerned with the logistics of getting the vote. This is very difficult because of the structure of these types of indentures and how they're held. It takes time and effort to get these ballots in the hands of those who will actually be casting the ballots. And we are concerned that, with regard to the death trap provisions as well as the fact that if no vote is received that it's deemed to be the same vote that they had before, that we need some assurances that the Debtor and its balloting agent can get this information into the hands of individual Quip holders in sufficient time for them to have a reasonable amount of time to analyze it and make an informed vote and not be caught up by a deadline. And whether this comes from a certification that as to when it was mailed and to whom it was mailed, I'm not sure, but there needs to be some protections afforded these folks since they're giving up significant rights that, in fact, they have been fully informed of these changes in the Plan. Thank you, Your Honor.

THE COURT: Thank you, Mr. Snellings.

MS. STEINGART: Good morning, Your Honor. Bonnie Steingart from Fried, Frank on behalf of Magten. We also filed an objection to the disclosure statement this morning, a limited objection, that touched on two points, which I will not go into in great detail because Law Debenture has covered most of it more than adequately. First was we believed as well that the description of the reasons for deconstructing class 8 were not clear, and the business purpose of that was certainly not apparent. That concern is exacerbated, from our point of view, this morning because I heard for the first time as Mr. Austin was speaking today about an additional voting adjustment that is being discussed with respect to the Quip holders with respect to before and after and individuals, and I'm not really quite sure that I understood it. I'm sure I'll see it in writing at some point and I'll have an opportunity to be heard on it. But given the initial uncertainty about the appropriateness of the difference in classes given the similarity of recoveries, this additional suggestion is something that on its face does not, you know, appear to advance the interests of the Quips. Indeed to the extent that there are distinctions that either the Debtor or others believe need to be made as a result of whether people held before 2002 or after 2002 or whether that makes some difference in entitlement with respect to the litigation, Your Honor, I

submit that those are motions that need to be made and legal issues that need to be decided and certainly cannot be, you know, sort of imposed as some sort of voting adjustment or segregating voting of the Quips in some way at this late date. To -- you know, to the extent that those are concerns I think that we would need to deal with them in the context of the adversary to the extent that the Debtor continues to have an interest in seeking to have the Quips unbundled in that way.

We also join Lloyd and Law Debenture in seeking to have the Debtors provide some more cogent discussion of their view of the impact of Your Honor's decision on Friday with respect to the Motion to Dismiss. Indeed, you know, we didn't expect to, you know, to see it this soon. Of course, you know, people need to read the opinion, they need to determine what disclosure is appropriate, and we are available and prepared to discuss adjustments to that disclosure with the Debtor in the hope of if Friday's the time that people want to have reached agreement with respect to disclosure, I'm hopeful that we can achieve that. Thank you, Your Honor.

THE COURT: Anybody else wish to be heard in connection with the proposed modifications to the disclosure statement?

MR. HOUSTON: Yes, Your Honor. May it please the Court, this is Joseph Houston of Stevens & Lee on behalf of Richard Hylland.

THE COURT: All right.

MR. HOUSTON: If it please the Court, Your Honor, we filed a limited objection to the second amended and restated disclosure statement last night. It's Docket Item 1985 and it deals specifically and only with respect to article 4(H), as in Henry, paragraph 7 of the disclosure statement and Article 10.13 of the Plan; identical language at each place. I don't -- does the Court have a copy of either the blackline or the Plan in front?

THE COURT: Well, a copy of your objection or a copy of the Plan?

MR. HOUSTON: A copy of the disclosure statement or the Plan.

THE COURT: I'm sure I do.

MR. HOUSTON: And the reason that I ask that is that our objection is that language that was added to both of those provisions is unclear at best.

THE COURT: All right. Well, let's go back and talk about -- I'm now looking at the blackline second amended and restated disclosure statement.

MR. HOUSTON: Very good, Sir. If you'll go to page 81.

THE COURT: Okay.

MR. HOUSTON: And if you look at paragraph 7, there is a sentence that's been added at the end of paragraph 7 towards

the top of the page. It begins, "The releases, exculpation," et cetera, et cetera.

THE COURT: Okay.

MR. HOUSTON: Now, at least four sets of eyes, to whom I spoke, read this and were unable to come up with agreement about what it meant. I believe that there is a word, at least one word, missing in the third line. It says, "and settlement of claims proposed." I think it should say, "to be released." But what it purports to say is that -- it looks as though -- I mean, it says that this is a paragraph about limitations on releases, exculpation, discharge and injunction, and what the sentence purports to say is that if the releases, exculpation, discharge, et cetera provided for the Plan also shall not be affected. Perhaps that should say "be effective," with respect to those releases and settlement of claims proposed to be released and settled under the class action settlement document. And none of the readers of this, at least on my side of things, could tell whether that was intended to protect the class action settlement or the Plan releases, whether that was to expand the Plan releases --

THE COURT: All right. Why don't we just -- why don't we ask Miss Denniston to say what they were trying to do and maybe the matter can be addressed that way.

MR. HOUSTON: And, Your Honor, if I may, just one left. An important part is that there is a carve out at the

end of that paragraph -- at the end of the added language that suggests that the class action settlement, if Your Honor does not approve it as submitted, Your Honor might approve the settlement but limit the parties to whom the Debtor may give releases. That is not the understanding in the class action settlement. The class action settlement is one whole transaction. If Your Honor chooses not to approve it, it is not approved, and I suppose that either the parties are back to the drawing board or the chips fall where they do. If Your Honor does approve it, then the class action is settled in the District Court. But there is no suggestion or provision in any of the documents that this is submitted to Your Honor to allow you to then amend the provision of the class action settlement document. And to the extent that this language suggests that that is a prospect, I don't believe that there is anyone who is a settling party who agrees that that is the intention of the agreement. It's either -- it's a "yay" or "nay", up or down.

THE COURT: I understand --

MR. HOUSTON: Either Your Honor -- if Your Honor approves it or --

THE COURT: I understand your point.

MR. HOUSTON: Okay.

THE COURT: Ms. Denniston?

MS. DENNISTON: Yes, Your Honor. The language here was an effort to basically, since the Debtor is not a fortune

teller, to basically say that the Plan is the Plan. The order on the MOU is the order on the MOU. And whatever the Court determines drives. And if the Court makes a decision on the MOU, that's a decision that doesn't impact what's happened in the Plan subject to the Debtor's ability to confirm that Plan. And that's all that that language was intended to do was to make it very clear to everyone that if the Court were to give them an option to either take the settlement with no releases, some releases, or as the Debtor has requested, that that in and of itself would not impact the release provisions that are set forth in the Plan. The Debtor and the estate view this as an issue that, you know, now lies with the Court as to what releases are being given in connection with the MOU and what releases are being given in connection with the Plan. And the Debtor is only trying to communicate, at this point, that whatever the Court determines will be the order.

THE COURT: Well, I mean, to take up the last point of Mr. Hylland's counsel first, I don't think anybody is expecting or has asked me to blue pencil the agreement, in affect saying, "I'm going to take out this release, this release, this release and then approve it." That's not to say that I couldn't issue an order if I wanted to that said, "I will not approve this settlement the way it is but if it came back to me with these blue penciled, then I would approve it. Or at least I would approve -- I would not have an objection to those releases."

I'm not suggesting that's what I'm going to do. And, you know, it would be easier, of course, if that order were out now. We wouldn't be talking about this but -- and I feel that, too. So I agree with Mr. Hylland's counsel that it's not my job to blue pencil it but I can certainly tell you what I would find acceptable. Then the parties can say, "Okay, well, we'll settle on that basis or we won't settle on that basis," depending upon what it is. And if I understand what else you're saying is that -- I take it however that turns out that does not affect the confirmability of the Plan. Is that what you're saying?

MS. DENNISTON: Yes, Your Honor. That's what we're saying. We're also saying that to the extent that there were changes in the order that that wouldn't affect the proposed releases that are provided for in the Plan. Unfortunate as that might be, the bankruptcy estate has an obligation to take care of the estate. And while we have been aligned with those parties to the MOU and would certainly like to see the MOU order entered as proposed, that in the event that there were differences that those parties would have to elect whatever treatment they found acceptable under the MOU as approved and whatever treatment is provided for in the Plan.

THE COURT: Okay.

MR. HOUSTON: Your Honor, Joe Houston again. It is my belief, given the explanation that's been offered, that this

language is probably, therefore, unnecessary because paragraph 7 begins by saying, "except as specifically provided for in the Plan the releases, exculpation," et cetera, et cetera with respect to the litigation, the remaining -- there are millions of words in the disclosure statement and many of them used to describe specifically what is going to happen in the settlement of various litigation what the nature of the releases are, the agreements between Mr. Hylland and the Debtors, which are different in certain respects from other agreements. And my suggestion on this would be either -- and again, I think if you just simply sit and read the language, it is unclear at best -- that this entire sentence either be taken out entirely or that we spend -- that we be permitted to spend some time off the Court's time with the Debtor to try to work out slightly more simple language to try to get them where they want to be.

THE COURT: All right. I see Mr. Etkin wants to weigh in on this.

MR. ETKIN: Thank you, Your Honor. Michael Etkin on behalf of the Class Action Plaintiffs in the securities litigation. I agree with Mr. Houston that there -- some language doesn't make sense, and certainly it can be taken care of with some language changes. But I think the purpose of this language, at least from my perspective, is significant. And I think it relates back also to a protective objection that we had filed with respect to the disclosure statement originally

that was taken care of with respect to some language in the initial disclosure statement, which I was mentioning to Mr. Austin before, needs a little clean up as well. But the purpose, the bottom line, is that the understanding is if a settlement is not approved, that there will be nothing in this Plan that precludes the securities litigation from going forward with respect to any non-Debtor Defendant in that litigation. And that's really the intention. And I think it's important -- this addition is important, assuming that that's what it's intended to accomplish, to make that clear.

One other point, however, Your Honor. The approval process with respect to the stipulation settlement which has been preliminarily approved by the District Court, I think as this Court knows, is a two-prong process. So while the approval by this Court is a condition with respect to the settlement ultimately, that settlement has to be approved by the District Court as well. So even if it is approved by this Court, if it's not approved by way of a final approval order in the District Court, everything goes away as well. So I think that this language also has to be tweaked a bit to make it clear that it's not just the approval of this Court but also of the District Court. And if both Courts approve, then, as hopefully this Court and the District Court will, then we have no issue. But if either Court doesn't approve, then we're back to square one.

THE COURT: All right. So Mr. Houston, I think you've raised a valid point that needs to be addressed. I understand, I think, what the Debtor and what the securities Plaintiffs are trying to accomplish here, and it seems to me to be reasonable. But I do think you ought to take another cut at the language.

MS. DENNISTON: Your Honor, what I would propose, since Mr. Etkin is here, that we utilize that to get some proposed language that perhaps we can put on the record later in the day.

THE COURT: All right. That sounds like it makes sense.

MR. HOUSTON: And my suggestion is that this could be as simple as saying, "the releases, exculpation, discharge and injunctions provided for in the Plan shall not be affected in any way by the approval or failure of approval by either the Bankruptcy Court or the District Court," period, full stop.

THE COURT: Well, and I think what Mr. Etkin was saying and vice versa, is what I heard.

MS. DENNISTON: Thank you, Mr. Etkin.

MR. ETKIN: We'll work it out, Your Honor. Thank you.

THE COURT: Okay. Let's go on, then.

MS. DENNISTON: Thank you, Your Honor.

MR. HOUSTON: Thank you, Your Honor.

MS. DENNISTON: Thank you, Your Honor. With regard to the objections that have been raised by Magten and by Law

Debenture, I'd like to take those in the order as presented. As to the status of the adversary proceeding and order entered by this Court on Friday, one of the things that the Debtor said up front at this hearing was that, "we're going to change that." I have read their objection, at least Law Debenture's objection, and would ask that by the end of the day before this hearing closes that they would just give us whatever language that we want and consistent -- or what they want. And consistent with the way we've handled that before, if the Debtor disagrees with their analysis, the Debtor will certainly say that these are the assertions and the Debtor disagrees with them. But I'd like to get proposed language rather than just a description of the adversary proceeding and its impact. With regard to attaching a copy of the order itself, the Debtor has no problem attaching a copy of the order to the full disclosure statement and making it available on the website and to be sent out to those Creditors that request it. The summary disclosure statement is -- will be updated to reflect that, but the fuller description and the order, I think, would be more appropriately attached to the disclosure statement which the solicitation package provides that will be posted on multiple websites. And also any Creditor that calls, the solicitation agent, the Debtor or anybody, the company will be provided with a full set of the disclosure statement and Plan.

THE COURT: Well, let's just put on the record what

your proposed procedure here is with regard to the summary disclosure statement.

MS. DENNISTON: Of course. Our proposed procedure, Your Honor, would be to distribute the summary disclosure statement with the amended ballots for class 7, 8 and 9. In that summary disclosure statement, there is in -- repeated in a number of places is the information where parties can obtain the full solicitation package which would be the black line and the Second Amended Plan and disclosure statement with the exhibits and with the -- all of the changes that we're making today. The purpose of the summary disclosure statement, at this Court knows, is a question of cost and timing to try to meet the exit time that the company's looking at. And if we have to go through a full solicitation not only would that be, we believe, unnecessarily burdensome because we could easily make available to anybody who requests the full documents.

As Mr. Austin indicated this morning, though, in the event that there is a change in the structure and treatment of class 8 with the opt out proposal, we would have to submit an amended ballot for class 8B which --

THE COURT: Now, I take it the idea is that there's a website from which all of these documents can be downloaded?

MS. DENNISTON: Yes, Your Honor. There's a number of websites, the --

THE COURT: As well as you would provide a hard copy

to somebody who requested it?

MS. DENNISTON: That's correct, Your Honor. The company runs a website. Kurtzman, the solicitation, runs a website and there is also -- there would also be access through Pacer. So there would be a number of options in addition to just calling anyone involved with the Debtor that would be happy to send copies.

THE COURT: Of course, access through Pacer requires a password and so on.

MS. DENNISTON: That's correct, Your Honor. And that's a comment for the counsel because there's a number of these people represented by very able counsel that we do know have access to Pacer.

THE COURT: But in any event, what you're doing is posting it somewhere else where there won't be that attendant both charge and password accessibility requirement.

MS. DENNISTON: That's correct.

THE COURT: Well, you know, we can talk about that a little later. Let me just tell you what my view on those sorts of things are because I heard either Mr. Snellings or Ms. Steingart, I don't remember who, say that everybody should get the whole package. Sometimes, I think that might be counter-productive. When you get an enormous package of stuff, it may be less likely to adequately inform somebody than a more focused document with clear ability to gain access to the full

documents for those who care. What I'm interested in here is that the disclosure is adequate and that the parties have -- any party who is voting has full access and the ability to know everything that needs to be known before they -- it makes its vote. I'm not always convinced that that is best accomplished by putting three feet of paper on their desk because I think a lot of people tend to throw that in the circular file as opposed to read something that may be more compact. So generally, I'm in favor of this sort of thing the Debtor is proposing, not only because of the cost but because, I think, it may be better calculated to actually provide meaningful information without overwhelming the recipient, so. I know I -- you now, if I get proxy statements, I'm overwhelmed. So I always am looking for ways to see if there's a way that you can actually get the real information, for example, from a download or from a request to the Debtor or to the voting agent or whoever. But that's not -- but a full package is not always the best way that's calculated to get the most information in the best way. So let's move on.

MS. DENNISTON: Okay. Your Honor, with regard to the language itself, both for the summary disclosure statement and the amended second disclosure statement, the Debtor would ask that Magten and Law Debenture provide us with the language that they would like included, including a description of the status of the adversary, any language that they would like to

highlight the death trap, anything else that is of concern to them because the Debtor, at this point, is solely interested in getting the information out so that the solicitation process can begin. We'd like to receive that language today so that if there is a problem and we're unable to reach agreement that we can address that with this Court today and be moving forward with the solicitation.

With regard to the classification issues that were raised, the Debtor believes that the language that we have now identifies accurately the classification. Now if that is subject to change and there is an opt-out created for class 8B, of course that's going to have to be addressed. And the Debtor would need to propose that language and circulate it and to see if anybody else had further comment on it.

But setting aside that issue for the moment, I think what we've really got here from Magten and Law Debenture is a question that is really a confirmation issue, and that is that whatever classification ends up being put out for class 8B is subject to confirmation and not necessarily the adequacy of the disclosure. The different treatment, though, Your Honor, just so that it can be clear and the Debtor is certainly willing to supplement the disclosure documents to reflect this, is that if you look at a settlement between class 8A a designation that's separate based on different indentures between 8A and 8B is certainly appropriate. Not notwithstanding the fact that as

this Court probably recalls from a disclosure statement hearing, that was an initial request made at that time. Now that we have a settlement with Harbert and with Wilmington Trust, it's appropriate that the non-settling parties that are subject to different indentures, a whole different set of obligations, that they should be set aside to be dealt with separately. With regard to the issues on whether or not 8A and 8B are liquidated, that in and of itself is a direct result of the settlement being reached. And the same thing is true for the payment of attorneys' fees. If Magten and Law Debenture want language in the disclosure statement that outlines the benefits of the settlement that the Debtor has reached with Wilmington Trust and Harbert, the Debtor has no problem including that because one can only guess that were a settlement reached with Magten, that some portion of that would probably be offered to Magten as well. So, in short, with regard to the classification objection, the Debtor believes, as it stated at the earlier disclosure statement hearing, that that is a confirmation issue that should be addressed at this -- as this Court decided at the continuance hearing on Friday. And that to the extent that Magten wants additional disclosure on the settlement and the benefits of the settlement or it wishes further disclosure in connection with anything else, if it would provide the language to the Debtor, we'd like to reach an agreement on that today.

THE COURT: All right. Let's hear from Magten to see if we can wrap this issue up.

MS. STEINGART: Your Honor, we would be happy to suggest some language to the Debtor; however, to the extent that the Debtor has created two classes, has created a death trap, has created other consequences for the Quips holders, the Debtor has an obligation to help that group. I'm not talking about Magten. Of course my clients can understand and Law Debenture will continue to talk about what the other Quips may require. But to the extent that they are creating these risks and these different kinds of decisions and more complex decisions that need to be made, it does become the burden of the Debtor to provide clear, fair, full disclosure and --

THE COURT: Of what, though? I mean, what is it, beyond what Miss Denniston said, is it that you would want?

MS. STEINGART: Well, certainly I think that Magten needs to -- I'm sorry, I think that the Debtor needs to disclose what the consequences of the long-term pursuit of the adversary will be with respect to the assets available to the Debtor concerning the effectuation of the Debtor's Plan. I think that the Debtor needs to --

THE COURT: I thought I heard her address that first and say yes, they're going to do that.

MS. STEINGART: Okay, and --

THE COURT: What we're talking about now,

specifically, is the A and B classification and what has to be disclosed. I agree with Ms. Denniston that this is a confirmation issue.

MS. STEINGART: Right, I --

THE COURT: It's not --

MS. STEINGART: -- agree --

THE COURT: -- going away if it's not disclosed. They're going to have to show that there's a legitimate business reason for -- a legally sufficient reason, whatever the appropriate standard may be, for the separate classification.

MS. STEINGART: Right, I --

THE COURT: And I accept that. I think what she was suggesting in terms of saying, "This is what they get, there has been a settlement with the Toppers and this is what they get as a result of the settlement. There has not been a settlement with the Quips and so their treatment is A, B, C and D, and they don't get this or they do get that and they have this option and the other folks don't." I think that's all fair and that's what I heard her say she was going to put in there. Much beyond that, I don't see where there's a disclosure issue.

MS. STEINGART: Right. Well, Your Honor, I do think that those things need to be added. And while we can contribute in terms of indicating to the Debtor what we think

they need to say about the adversary, in terms of the class treatment and the options and the downside and the risks that Quips holders now have in terms of voting for or against which were not present when class 8 was one class --

THE COURT: Well, what are the risks --

MS. STEINGART: -- with no death trap.

THE COURT: -- that are different? Because their treatment hasn't really changed.

MS. STEINGART: Well, there's a death trap now, Your Honor.

THE COURT: And there was a death trap before. As to --

MS. STEINGART: Well --

THE COURT: As to all of class 8.

MS. STEINGART: As to all the class 8.

THE COURT: Right. So there's the same death trap for the Quips as there was before. That's what I'm not understanding how their risks have changed from what they were to begin with.

MS. STEINGART: Well, the risks have changed because in -- because to the extent that the Toppers accepted the settlement, then the class would receive the proceeds of the settlement, the entire class would have received the proceeds of the settlement. And I --

THE COURT: Well, I don't understand what you mean.

MS. STEINGART: Well --

THE COURT: There is no settlement with the Quips. So the fact that the Toppers are getting the benefits of a settlement doesn't really change the risk for the Quips unless -- now if it does in some way that I'm not understanding, I think that would be a fair point. But I don't see where the fact that there's a settlement with the Toppers changes the risks for the Quips.

MS. STEINGART: Well, the change -- Your Honor, there is that to the extent that class 8 had remained as it was and Harbert changed its vote, then the proceeds of the settlement would have been distributed to the entire class and the adversary would have continued. With the change in the classes, the fact that Harbert's change of vote carries the class does not -- it changes the treatment --

THE COURT: But I think the settlement --

MS. STEINGART: -- of the entire class.

THE COURT: -- only -- the settlement with regard to the adversary -- there was no settlement with regard to the adversary as far as Harbert was concerned, was there?

MS. STEINGART: There is no settlement of the adversary. It --

THE COURT: I mean as far as --

MS. STEINGART: -- you know --

THE COURT: -- in other words --

MS. STEINGART: -- the adversary is a non-sequitur with respect to Harbert, Your Honor.

THE COURT: But if the class carried because Harbert changed its vote, if it had remained as class 8, under the original Plan, what is your view of what would have happened to the adversary that is different from what would happen now?

MS. STEINGART: Well, under the Plan as proposed before, the adversary would have continued.

THE COURT: Well, wasn't there the same kind of requirement? I thought there was with regard to affirmative acceptance by the holders of the Quips. But I -- you know, you all understand this better than I do. Ms. Denniston, am I missing something here? Or was there -- or Mr. Austin, was there a real -- is there a fundamental difference -- are the -- here's the question: are the Quips put at more risk in terms of the continuation of the adversary or the noncontinuation of the adversary under the A/B structure than they were under the single unitary 8 structure.

MR. AUSTIN: None. None whatsoever, Your Honor.

THE COURT: Explain why --

MR. AUSTIN: They had the --

THE COURT: -- that's true.

MR. AUSTIN: -- same level of risk. Same -- it was the same death trap today as it was in the prior Plan. In fact, they have -- as a practical matter, they have the benefit

of retaining all of their particular interests because if you follow what Ms. Steingart would want us to do, which is say okay, throw this all together back in class 8, let Harbert effectively control the vote of the class, the way the Plan was drafted, the way the plan is Drafted is that at that point, if the class accepted the treatment, the adversary case actually goes away because you only take what you're able to get on a distribution that you've consented to from the class. So from that standpoint, if we actually followed what she wanted us to do, which sometimes I think maybe I should fall into her briar patch, is that, hey, if I do that then that does take care of the adversary. But then I assume she's going to be standing over here at the same time saying, "Oh, but you can't take that away from me." So the way we've classified it today is their risk is the same today as it was under the old Plan. They either can accept the Plan to get the distributions or they can reject the plan and get the death trap clause and they can work solely through their adversary case.

MS. STEINGART: A clarification, Your Honor. In the Plan as prepared with a unitary class 8, to the extent that the class accepted, those of the class who wanted to receive the distribution would receive them. Those in the class that voted against the Plan and determined not to receive the distribution would be left to the adversary. In the class now as unbundled, if the class rejects the Plan, no one in the class will receive

the distribution. Okay? And from my point of view, Your Honor, that is a change. So if there had been no adjustment to A and B and Harbert changed its vote, the Quips holders who desired -- if the Quips holders, as a separate class, were not sufficient in number and amount to accept the Plan, okay, but some Quips holders wanted to accept the Plan, they could. They would be out of the adversary, don't get me wrong. I mean, they couldn't take the distribution under the Plan and pursue the adversary, but there would be the option of Quips holders who did want to pursue the adversary to do that, and those who wanted to accept the proposal in the Plan to do that. As currently proposed, if the class rejects the Plan, there is not the opportunity for those --

THE COURT: If Class 8B -- you're talking about?

MS. STEINGART: I'm sorry. Yes, Your Honor. If class 8B rejects the Plan, there is not the ability of those persons, Quips holders in class 8 who would prefer to have the x or y amount, to have it and for the others to pursue the adversary. So I think, Your Honor, that is a change. But I agree with Mr. Austin and I agree with Your Honor that that is something that we can deal with at confirmation whether -- other than gerrymandering that vote is a reason for that and a business purpose. We need to deal with that today. But I do think that it impacts on the kind and extent and the nature of the disclosures. I don't think people should be getting three